IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.654 OF 2002

Rajdev Shivcharan Maurya & Anr. ...Petitioners.

Versus

Municipal Corporation for Greater Mumbai. ...Respondent.

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Mr. Shreepad Murthy with Mr.Piyush Shah for the Petitioners.
Mr. K.K. Singhavi, Senior Advocate with Mrs.A. R. Joshi for the Respondent.

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CORAM : DR. D.Y. CHANDRACHUD, J.

April 11, 2005.

ORAL JUDGMENT:

According to the Petitioners, sometime in the year 1948, their predecessor in interest, Shivcharan Gajadhar Maurya, took on lease from the original land owner one Shri S.N. Desai, the plot of land in question, bearing Survey No.103, CTS 746, admeasuring 1200 sq.mtrs or thereabout. Several structures are stated to have

been constructed thereon, comprising of a stable, nine rooms, three shops and two other residential rooms. The land and structures situated thereon are situated at the corner of S. V. Road and Dahyabhai Patel Road at Goregaon (West), Mumbai-400 062. Some of the rooms constructed on the plot of land are said to have been let out by the Petitioners or their predecessor in interest. It has been averred in the Petition that in 1975, the predecessor in interest of the Petitioners informed them that the property had been acquired by the Municipal Corporation from the original owner, S. N. Desai, and that the lease rent should be accordingly paid to the Corporation. In para 6 of the Petition, there is a specific averment that the ground rent in respect of the suit land was paid by the Petitioners' predecessor in interest and was accepted by the Respondent. On 7th August 1997, an amount of Rs.600/- was stated to have been paid as ground rent in respect of the property for the period 17th February 1975 to 17th April 1976. After the death of their predecessor in interest on 13th September 1981, according to the Petitioners, no rent was collected by the Respondent from the Petitioners.

2. It appears that a part of the land on which these structures were located came within a proposal for road widening. The Petitioners submitted a proposal on 31st July 1999 and with reference thereto received a communication from the Ward Officer, P- South Ward on 28th September 2000. By the aforesaid communication, the proposal submitted by the Petitioners for shifting the occupant/tenants' housed in the existing structure and affected by the road widening of S.V. Road and Dayabhai Patel Road, beyond the road line, was stated to have been considered and the Corporation issued a permission for the re-location of the existing structure. By the communication of the Corporation, the Petitioners were to remove the existing structure of the stable situated on the land completely and to relocate the structure in a portion of the land by constructing a structure with a ground floor and a mezzanine floor of a total area admeasuring 3626 sq.ft., the ground and the mezzanine floors each consisting of 1813 sq.ft. The permission of the Municipal Corporation stipulated that the construction shall be of a nine inch thick brick

masonry wall. The land in question had been reserved for the construction of a Municipal Office Building and one of the conditions in the permission stipulated that the Petitioners shall hand over the affected land after the removal of the structure for the development of the Municipal Office. Among the conditions was also a requirement that the Petitioners shall submit a registered undertaking agreeing to the stipulation laid down by the Corporation; that they shall carry out relocation strictly in accordance with the permission and that if any further portion of the structure or land is required by the Corporation in future, the same shall be handed over to the Corporation. Before the Court, it is not disputed that no undertaking was filed by the Petitioners.

3. The permission which was granted by the Corporation was revalidated upto 31st March 2001. On 28th February 2001, a stop work notice came to be issued by the Corporation under Section 354A of the Mumbai Municipal Corporation Act, 1888. On 21st March 2001, the permission for relocation that had been issued on 28th September

2000 was revoked on the ground that the Petitioners had failed to withdraw all the suits which had been filed by them against the Municipal Corporation; and that a registered undertaking as required had not been furnished.

4. This petition was filed on 23rd March 2001 to challenge the action of the Municipal Corporation. When the petition came up for hearing on 10th April 2001, a statement was made on behalf of the Petitioner that the suits which had been instituted by the Petitioners had already been withdrawn while the only suit which was pending was a suit filed by the tenants upon which the Petitioners had no control. The Municipal Corporation had revoked the permission without furnishing an opportunity of being heard to the Petitioners and accordingly, a direction was issued to the effect that the Petitioners be heard and a fresh order be passed within six weeks. Accordingly, on 2nd June 2001 an order was passed by the Assistant Municipal Commissioner, P-South Ward. The order of the AMC noted that the land which originally belonged to S. N. Desai had been taken

possession of by the Corporation on 17th February 1975 and that a possession receipt had been issued. The order then recorded that a Municipal Office Building would be constructed on the land by inviting bids from private parties and that the Petitioners and their tenants would be accommodated on the ground floor of the new building by the allotment of commercial space. The Petition was amended to impugn the order dated 2nd June 2001.

5. An affidavit was filed initially on behalf of the Municipal Corporation on 18th June 2001 in which it has been stated that a plot of land comprising of various survey numbers viz., CTS 744 (part), 747 (part), 748 (part) and 749 (part) of village Pahadi, Goregaon has been reserved for the construction of a Municipal Office Building for P-South Ward under the revised sanctioned development plan. The total area thus earmarked was stated to be 4000 sq.mtrs. An area admeasuring 1740 sq.mtrs. is stated to have been taken possession of from the original owner, S. N. Desai, in the year 1975 whereas land admeasuring approximately 2260 sq.mtrs. was stated to have been

taken over from Jawahar Nagar Co-operative Housing Society on 24th March 1980. The structures which were situated on the land were affected by the road widening of S. V. Road and Dayabhai Patel Road. Hence, it was clarified that permission was granted for relocation of the structures on the said portion of the land by the construction of temporary sheds. According to the Municipal Corporation though temporary permission had been granted to the Petitioners, to carry out construction using only brick masonry walls, they had carried out construction upto the ground floor by providing an RCC foundation and plinth and had erected “huge I-Section posts (ISMB 300)” which was not required for the purposes of such a temporary construction. The Municipal Corporation then stated that it proposed to invite private bids for the construction of a building for a Municipal Office and the Petitioners would be given an area admeasuring 3626 sq.ft. for commercial use in the building.

6. A subsequent affidavit has since been filed on behalf of the Municipal Corporation on 25th February 2005. In the affidavit it has

been stated that land bearing CTS No.746/11, 746/11/1, 746/12, 788/1/4, 746/1/29, 746/1 (part) and 746/15 and 16 which originally belonged to S. N. Desai was handed over to the Municipal Corporation on 17th February 1975. The total extent of the land was stated to be 2673 sq.yards. Similarly, land bearing CTS 744 (part), 747 (part), 748 (part) and 749 (part) which belonged to Jawahar Nagar Co-operative Housing Society was acquired on 24th March 1980 under a land acquisition award declared on 14th August 1986. The stable belonging to the Petitioners was stated to be on CTS 746 which was owned by S. N. Desai from whom the property was taken possession of by the Municipal Corporation. In the affidavit dated 25th February 2005, it has been stated that though initially the Petitioners were to relocate in the building which was proposed to be newly constructed on the land by inviting bids, it has since been decided that the entire building which is to be constructed on the plot of land in question will be used solely and exclusively as a Municipal Office Building. The Petitioners, it was stated, would be given alternative accommodation on the First Floor of a Municipal Market situated at

Liberty Garden, Malad (West). It was stated that initially there was a proposal to construct the Municipal Office Building through private bids. Subsequently, an administrative decision was taken that the office building will be constructed by the Municipal Corporation itself and a provision of Rs.1 crore has been made in the current budget for the construction of the office building. The Petitioners are thus proposed to be relocated at an alternative site at the Municipal Market noted hereinabove.

7. When this petition came up for hearing, time was taken on behalf of the Petitioners to consider the proposal which has been made on behalf of the Municipal Corporation for accommodating them on the first floor of the Municipal Market situated at Liberty Garden, Malad (West). Counsel appearing on behalf of the Municipal Corporation stated that alternative accommodation in the same Municipal Market had been granted to certain other tenants in proceedings which came up before a Division Bench of this Court in **Vinod S.Shah Vs. B. M. C.** (Writ Petition 1875/2002), in which an

order in terms of agreed minutes is stated to have been passed. The Corporation has offered 3660 sq.ft. subject to payment of 25% of the cost of construction and the maintenance charges uniformly prescribed for all persons.

8. Counsel appearing on behalf of the Petitioners has taken instructions and has stated before the Court that it is not possible for the Petitioners to accept the alternative accommodation which is offered by the Municipal Corporation since the accommodation is not convenient and the Petitioners would not be in a position to pay the monthly maintenance charges computed at the rate of 12.50 per sq.ft. inclusive of taxes. Counsel appearing on behalf of the Petitioners submitted that though the area which is proposed to be allotted admeasures 3600 sq.ft., the potential liability of approximately of Rs.45,000/- per month cannot be borne by the Petitioners and other tenants together.

9. Since the Petitioners are not ready and willing to accept the

alternative accommodation which has been allotted by the Municipal Corporation, Learned Counsel appearing on behalf of the Corporation states that the Corporation must take recourse to due process of law for obtaining possession from the Petitioners. Counsel states that the Corporation shall take steps in accordance with the provisions of the Mumbai Municipal Corporation Act, 1888 to terminate the tenancy of the Petitioners and to obtain possession of the land for the public purpose of fulfilling the reservation in the development plan of a Municipal Office of the Corporation. In the event that the Corporation takes such steps as has been stated before the Court, all defences of the Petitioners are kept open to be urged in appropriate proceedings. Since the Petitioners are not ready and willing to accept the offer of alternative allotment which is made by the Municipal Corporation, it is now agreed before the Court that the offer shall no longer subsist. The Petitioners had moved a Chamber Summons in these proceedings questioning the title of the Corporation. Counsel appearing on behalf of the Municipal Corporation urged before the Court that it is not open to the

Petitioners to question the title of the Municipal Corporation since the predecessor in interest of the Petitioners accepted the title of the Corporation and paid rent to the Corporation as is stated in para 6 of the Petition. The rights and contentions of the parties are kept open in this regard to be urged in appropriate proceedings.

10. Counsel appearing on behalf of the Petitioners states that the Petitioners shall not carry out any further construction on the structure which exists at the site without first applying for and obtaining the written permission from the Competent Authority of the Municipal Corporation. Counsel appearing on behalf of the Municipal Corporation states action in respect of the structure(s) which exist at the site shall be taken in accordance with law, should the Corporation be advised to do so.

11. Since no other submission has been urged at this stage of the Petition, the Petition shall accordingly stand disposed of . There shall be no order as to costs.

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